IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

YVONNE J. OROVA and WILLIAM OROVA	:	CIVIL ACTION
v.	:	NO. 03-4296
NORTHWEST AIRLINES INC.	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J. **February 2, 2005**

Yvonne and William Orova have sued Northwest Airlines, alleging breach of contract and intentional infliction of emotional distress, after they were humiliated and barred from a flight from Europe to the United States. Northwest Airlines asks for summary judgment on grounds Northwest is an improper party because the flights in question were operated by KLM and the Warsaw Convention limits actions to the actual carrier. For the reasons that follow, we grant Northwest's Motion for Summary Judgment.

FACTS[1]

The Orovas purchased airline tickets from Newark, New Jersey to Geneva, Switzerland and Amsterdam, The Netherlands in May 2001 on the internet from www.travelocity.com, a Northwest ticketing agent. The events underlying this lawsuit began on a KLM Royal Dutch

[1]All facts were taken from the Complaint. In a Motion for Summary Judgment, we must view all facts and draw all reasonable inferences in favor of the nonmoving party, the Plaintiffs. *Brosseau v. Haugen*, 125 S. Ct. 596 (2004).

Airlines[2] flight from Geneva to Amsterdam.

During this flight, Ms. Orova noticed the cockpit door was open and a "large, burly" male was leaning over the pilot's head and touching the control panel. Complaint ¶ 6-7. The Orovas asked a flight attendant if she knew the man in the cockpit. The flight attendant said he was a KLM employee. The attendant relayed the Orovas' question to the pilot and the male standing in the cockpit, who glared at Ms. Orova when he returned to his seat. Complaint ¶ 9. When the plane landed, the pilot prevented Ms. Orova from exiting the plane, accusing her of interfering with the pilot's command of the plane. The pilot asked Ms. Orova's name when she said she would report the unidentified man. Complaint ¶ 10-11.

The Orovas returned to the Amsterdam airport on June 23, 2001 for their return flight to Newark with KLM. Ms. Orova has health problems and asked for an aisle seat or a seat with more room. The Orovas' seats were subsequently switched and Ms. Orova no longer had her requested seat. The Orovas notified the purser, who told the Orovas to leave the plane and speak to the gate attendant. Complaint ¶ 14-16. The Orovas eventually reentered the plane, accompanied by an attendant. While the Orovas were reentering, a flight attendant said the Orovas were at the airport the day before "causing problems." Another flight attendant said she heard the Orovas caused problems on their previous flight from Geneva to Amsterdam. Complaint ¶ 19.

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[2]Travelocity is a Northwest issuing agent and printed the Orovas' tickets on Northwest ticketing stock, even though the Orovas were flying with KLM. Northwest and KLM are alliance partners, which is an arrangement between carriers intended to improve traveling through code-sharing, joint marketing, coordination of reservations, integration of frequent flyer programs, and reciprocal airport lounge access. Northwest's alliance partners includes KLM, Continental, Air China, Malaysia Airlines, Japan Air System and Alitalia. Northwest's Memorandum, November 15, 2004, p. 3.

While one of the flight attendants was speaking to the people sitting in the Orovas' assigned seats, Mr. Orova noticed two empty seats nearby and touched a flight attendant's elbow to draw her attention to them. The flight attendant yelled at Mr. Orova not to touch her, escorted the Orovas off the flight, and called security. Complaint ¶ 18-20. The purser would not allow the Orovas to re-board the flight. The Orovas spoke to customer relations about the incident and they were booked on the next flight to Newark the following day. Complaint ¶ 22-23.

The next day, the Orovas waited in a ticketing line long enough to miss their flight. Complaint ¶ 24-25. While waiting to make reservations on yet another flight to the United States, KLM security personnel approached the Orovas and told them they would not be flying with KLM. The Orovas ultimately made reservations with other airlines to return home, costing them additional time and expense. Complaint ¶ 29-32.

DISCUSSION

A motion for summary judgment will only be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corporation v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986).

The moving party bears the burden of proving no genuine issue of material fact is in dispute and the court must review all of the evidence in the record and draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348 (1986). Once the moving party has carried its initial

burden, the nonmoving party must then "come forward with specific facts showing there is a genuine issue for trial." *Matsushita*, 475 U.S. at 587 (citing Fed.R.Civ.P. 56(e)). A motion for summary judgment will not be denied because of the mere existence of some evidence in support of the nonmoving party. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-48 (1986). The nonmoving party must present sufficient evidence for a jury to reasonably find for them on that issue. *Anderson,* 477 U.S. at 249 (1986).

Northwest states it is not the proper party to this action because the Orovas flew with another airline, KLM, and Northwest employees had no contact with the Orovas during any of their flights or at Amsterdam's airport. Northwest's issuance of the Orovas' tickets, through its agent Travelocity, has no causal relationship to the incidents that occurred with KLM. The two airlines are alliance partners and separate corporate entities.

It is a plaintiff's obligation to sue the proper party. *Flyn v. Best Buy Auto Sales*, 218 F.R.D. 94 (E.D. Pa. 2003) (*citations omitted).* The Orovas here sued the wrong corporation. One corporation can only be liable for another corporation's actions if the plaintiff presents sufficient facts to pierce the corporate veil. *Official Committee of Unsecured Creditors v. R.F. Lafferty & Co., Inc.*, 267 F.3d 340 (3d Cir. 2001). The party seeking to pierce the corporate veil must establish the controlling corporation wholly ignored the separate status of the controlled corporation and controlled its affairs. *Culbreth v. Amosa (PTY) Ltd.*, 898 F.2d 13, 14 (3d Cir. 1990). "The doctrine of piercing the corporate veil, however, is the rare exception, applied in the case of fraud or certain other exceptional circumstances . . . ." *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003). "[C]ourt[s] must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception . . .

. Care should be taken on all occasions to avoid making the entire theory of the corporate entity useless." *Zubik v. Zubik,* 384 F.2d 267, 273 (3d Cir.1967).

The Orovas have not presented any theory for piercing the corporate veil. They have only alleged KLM and Northwest are closely related because of their alliance relationship. The Orovas claim this relationship imputes liability to Northwest because their tickets were issued on Northwest ticket stock, both airlines advertise jointly, and customer claims in the United States for both airlines are directed to a Northwest telephone number. Such a relationship is insufficient to hold one corporation liable for the actions of another. The events during the Orovas' flight and at Amsterdam airport were exclusively the result of KLM's independent actions. Northwest did not ignore KLM's separate corporate status and did not control KLM's affairs. Holding otherwise would wholly ignore KLM's corporate entity and impose liability on an undeserving corporation.

The Warsaw Convention[3] also supports our granting Northwest's Motion for Summary Judgment. The Convention is an international treaty which provides uniformity of rules governing claims arising from international air transportation. *El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 169 (1999). As a United States treaty, the Convention supersedes state law and is the supreme law of the land. U.S. CONST. art. VI. "When the Warsaw Convention applies, it is the exclusive remedy for actions against air carriers." *Onyeanusi v. Pan Am*, 952 F.2d 788, 793 (3d Cir. 1992). Once a court determines a plaintiff's claim falls within the scope of the Warsaw

[3]Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (1936).

Convention, "it must dismiss all state law claims as preempted, and allow a plaintiff to proceed only on claims cognizable under the Convention." *Pennington v. British Airways*, 275 F. Supp.2d 601, 603-04 (E.D. Pa. 2003) (citing *Tseng*, 525 U.S. at 161).

The Orovas' available causes of action arise under Chapter III, Articles 17 and 19 of the Convention, entitled "Liability of the Carrier." Article 17 defines a carrier's liability for bodily injury to a passenger and states, "[t]he carrier shall be liable . . . if the accident . . . took place on board the aircraft or in the course of any of the operations of embarking or disembarking." Article 19 provides, "[t]he carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods."

The term 'carrier' used in Articles 17 and 19 is not defined in the Convention, but is a question of law the court must determine. *Marotte v. American Airlines, Inc.*, 296 F.3d 1255, 1259 (11th Cir. 2002);*Kalantar v. Lufthansa German Airlines* , 276 F. Supp.2d 5 (D.D.C. 2003). The term carrier, as used in the Convention, means the airline which "actually transport[s] the passengers or baggage." *Kapar v. Kuwait Airways Corp.*, 845 F.2d 1100, 1103 (D.C. Cir. 1998); *see also Pflung v. Egyptair Corp.*, 961 F.2d 26 (2d Cir. 1992). Northwest issued the Orovas' tickets, but was not the carrier. Only the airline that engaged in the actual transportation, KLM, can be held liable.

The Orovas also filed Motions for Leave to File an Amended Complaint and to Require Joinder. Both motions are denied because the Orovas seek to add Air France,[4] an improper party to this action, and the Amended Complaint would be beyond the Warsaw Convention's and

[4]The Orovas state in their Motion to Require Joinder Air France and KLM merged on May 4, 2004.

Pennsylvania's two year statute of limitations.[5] The Orovas were scheduled to arrive in Newark on June 23, 2001, the date the statute of limitations begins to run according to the Convention. The Orovas filed their complaint in the Philadelphia County Court of Common Pleas on June 11, 2003. Permitting the Orovas to file an amended complaint three and a half years later, without prior notice to Air France, would be untimely and prejudicial.[6] Accordingly, we enter the following:

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[5]Article 29 of the Warsaw Convention states:

> (1) The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.
>
> (2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

[6]Fed.R.Civ.P. Rule 15(c)(3) permits amended pleadings to relate back to the original pleading, so long as "the party to be brought in by amendment . . . has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits . . . ."

ORDER

AND NOW, this 2nd day of February, 2005, Defendant's Motion for Summary Judgment (docket 16) is GRANTED. Plaintiffs' Motion for Leave to File an Amended Complaint (docket 17) and Motion to Require Joinder (docket 21) are DENIED. Plaintiffs' Motion to Compel (docket 19) and Motion to Stay Proceedings (docket 20) are DENIED as moot.

BY THE COURT:

/s/ Juan R. Sánchez, J.
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